

SB 37

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WEST VIRGINIA LEGISLATURE
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OFFICE WEST VIRGINIA
SECRETARY OF STATE

REGULAR SESSION, 2015



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 37

(SENATOR PALUMBO, ORIGINAL SPONSOR)

[PASSED MARCH 14, 2015; IN EFFECT JULY 1, 2015.]

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(SENATOR PALUMBO, *ORIGINAL SPONSOR*)

[Passed March 14, 2015; in effect July 1, 2015.]

AN ACT to amend and reenact §55-10-1, §55-10-2, §55-10-3, §55-10-4, §55-10-5, §55-10-6, §55-10-7 and §55-10-8 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto twenty-five new sections, designated §55-10-9, §55-10-10, §55-10-11, §55-10-12, §55-10-13, §55-10-14, §55-10-15, §55-10-16, §55-10-17, §55-10-18, §55-10-19, §55-10-20, §55-10-21, §55-10-22, §55-10-23, §55-10-24, §55-10-25, §55-10-26, §55-10-27, §55-10-28, §55-10-29, §55-10-30, §55-10-31, §55-10-32 and §55-10-33, all relating generally to arbitration; providing for a short title; making legislative findings; defining terms; defining notice under article; defining when article applies; prescribing effect of agreements to arbitrate; identifying nonwaivable provisions of article; allowing for application for judicial relief under article; providing required method for notice of application for judicial relief; making agreement to arbitrate valid unless legal or equitable reason for revocation exists; delineating decisions to be made by judge and arbitrator; providing for terms by

which arbitration may continue if challenged; providing for process for motions to compel or stay arbitration; providing for provisional remedies to protect effectiveness of arbitration proceedings; providing process for initiation of arbitration; providing for consolidation of separate arbitration proceedings; providing for appointment of arbitrator and default process for appointing arbitrator if not agreed by the parties; requiring neutrality of arbitrators; requiring disclosure by arbitrators of matters likely to affect impartiality; requiring majority of arbitrators to agree to exercise powers; providing immunity for arbitrators; providing exceptions to arbitrator immunity; providing that arbitrator incompetence to testify to same extent as judges; providing exceptions to arbitrator incompetence to testify; providing for attorneys' fees and costs for challenges from which arbitrators are immune from civil liability; providing general process for arbitration; providing for appointment of replacement arbitrator if necessary; allowing parties to be represented by a lawyer in arbitrations; outlining procedure for witnesses, issuance of subpoenas, depositions, discovery and protective orders in arbitrations; providing for judicial enforcement of discovery-related orders by arbitrator; providing for judicial enforcement of preaward ruling by arbitrator; providing for record of an award and requirements for making an award; providing an exemption from the award provisions in the case of arbitration conducted or administered by a self-regulatory organization as defined by the Securities Exchange Act of 1934, the Commodity Exchange Act or regulations adopted under those acts; allowing change of an award by arbitrator upon motion under certain conditions; providing that certain remedies and fees and costs of arbitration may be a part of arbitration award; allowing for confirmation by court of an award upon motion; providing process and grounds for vacating an award by a court; providing process and grounds for modification or correction of an award upon motion; providing that court shall enter a judgment upon confirmation of an award and may add certain reasonable

attorneys' fees and costs; providing for jurisdiction over arbitration agreements by a court of this state; providing venue; providing that appeals may be taken from certain orders related to arbitration proceedings; requiring uniform application and construction of act; providing that this act shall conform with the Electronic Signatures in Global and National Commerce Act; and clarifying that the act does not affect an action or proceeding commenced or right accrued before the effective date of the article.

Be it enacted by the Legislature of West Virginia:

That §55-10-1, §55-10-2, §55-10-3, §55-10-4, §55-10-5, §55-10-6, §55-10-7 and §55-10-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto twenty-five new sections, designated §55-10-9, §55-10-10, §55-10-11, §55-10-12, §55-10-13, §55-10-14, §55-10-15, §55-10-16, §55-10-17, §55-10-18, §55-10-19, §55-10-20, §55-10-21, §55-10-22, §55-10-23, §55-10-24, §55-10-25, §55-10-26, §55-10-27, §55-10-28, §55-10-29, §55-10-30, §55-10-31, §55-10-32 and §55-10-33, all to read as follows:

ARTICLE 10. ARBITRATION.

§55-10-1. Short title.

1 This article may be cited as the Revised Uniform
2 Arbitration Act.

§55-10-2. Declaration of public policy; legislative findings.

1 The Legislature finds that:

2 (1) Arbitration, as a form of alternative dispute
3 resolution, offers in many instances a more efficient and cost-
4 effective alternative to court litigation.

5 (2) The United States has a well-established federal
6 policy in favor of arbitral dispute resolution, as identified
7 both by the Federal Arbitration Act, 9 U.S.C. §1, *et seq.*, and
8 the decisions of the Supreme Court of the United States.

9 (3) Arbitration already provides participants with many of
10 the same procedural rights and safeguards as traditional
11 litigation, and ensuring that those rights and safeguards are
12 guaranteed to participants will ensure that arbitration remains a
13 fair and viable alternative to court litigation and guarantee that
14 no party to an arbitration agreement is unfairly prejudiced by
15 agreeing to an arbitration agreement or provision.

§55-10-3. Definitions.

1 In this article:

2 “Arbitration organization” means an association, agency,
3 board, commission or other entity that is neutral and initiates,
4 sponsors or administers an arbitration proceeding or is
5 involved in the appointment of an arbitrator.

6 “Arbitrator” means an individual appointed to render an
7 award, alone or with others, in a controversy that is subject to
8 an agreement to arbitrate.

9 “Court” means a circuit court in this state.

10 “Knowledge” means actual knowledge.

11 “Person” means an individual, corporation, business trust,
12 estate, trust, partnership, limited liability company,
13 association, joint venture or government; governmental
14 subdivision, agency or instrumentality; public corporation; or
15 any other legal or commercial entity.

16 “Record” means information that is inscribed on a
17 tangible medium or that is stored in an electronic or other
18 medium and is retrievable in perceivable form.

§55-10-4. Notice.

1 (a) Except as otherwise provided in this article, a person
2 gives notice to another person by taking action that is
3 reasonably necessary to inform the other person in ordinary
4 course, whether or not the other person acquires knowledge
5 of the notice.

6 (b) A person has notice if the person has knowledge of
7 the notice or has received notice.

8 (c) A person receives notice when it comes to the person’s
9 attention or the notice is delivered at the person’s place of
10 residence or place of business or at another location held out by
11 the person as a place of delivery of such communications.

§55-10-5. When article applies.

1 (a) This article governs an agreement to arbitrate made on
2 or after July 1, 2015.

3 (b) This article governs an agreement to arbitrate made
4 before July 1, 2015, if all the parties to the agreement or to
5 the arbitration proceeding so agree in a record. Such record
6 may be made at any point and, for the mutual covenants
7 contained therein, no additional consideration is required by
8 either party.

9 (c) Any agreement to arbitrate renewed or continued on
10 or after July 1, 2015, shall be governed by this agreement
11 and, for the mutual covenants contained therein, no additional
12 consideration is required by either party.

§55-10-6. Effect of agreement to arbitrate; nonwaivable provisions.

1 (a) Except as otherwise provided in subsections (b) and
2 (c) of this section, a party to an agreement to arbitrate or to an
3 arbitration proceeding may waive or the parties may vary the
4 effect of the requirements of this article to the extent
5 permitted by law.

6 (b) Before a controversy arises that is subject to an
7 agreement to arbitrate, a party to the agreement may not:

8 (1) Waive or agree to vary the effect of the requirements
9 of sections seven, eight, ten, nineteen, twenty-eight or thirty
10 of this article;

11 (2) Agree to unreasonably restrict the right under section
12 eleven of this article to notice of the initiation of an
13 arbitration proceeding;

14 (3) Agree to unreasonably restrict the right under section
15 fourteen of this article to disclosure of any facts by a neutral
16 arbitrator; or

17 (4) Waive the right under section eighteen of this article
18 of a party to an agreement to arbitrate to be represented by a
19 lawyer at any proceeding or hearing under this article, but an
20 employer and a labor organization may waive the right to
21 representation by a lawyer in a labor arbitration.

22 (c) A party to an agreement to arbitrate or arbitration
23 proceeding may not waive, or the parties may not vary the
24 effect of, the requirements of this section or sections five,
25 nine, sixteen, twenty, twenty-two, twenty-four, twenty-five,
26 twenty-six, twenty-seven, thirty-one, thirty-two or
27 thirty-three of this article.

§55-10-7. Application for judicial relief.

1 (a) Except as otherwise provided in section thirty of this
2 article, an application for judicial relief under this article must
3 be made by motion to a West Virginia circuit court as
4 specified in section twenty-nine of this article and heard in
5 accordance with the rules of civil procedure governing
6 motions.

7 (b) Unless a civil action involving the agreement to
8 arbitrate is pending, notice of an initial motion to the court
9 under this article must be served in the manner provided by
10 law for the service of a summons in a civil action. Otherwise,
11 notice of the motion must be given in the manner provided by
12 the rules of civil procedure for serving motions in pending
13 cases.

§55-10-8. Validity of agreement to arbitrate.

1 (a) An agreement contained in a record to submit to
2 arbitration any existing or subsequent controversy arising
3 between the parties to the agreement is valid, enforceable and
4 irrevocable except upon a ground that exists at law or in
5 equity for the revocation of a contract.

6 (b) The court shall decide whether an agreement to
7 arbitrate exists or a controversy is subject to an agreement to
8 arbitrate.

9 (c) An arbitrator shall decide whether a condition precedent
10 to arbitration has been fulfilled and whether a contract
11 containing a valid agreement to arbitrate is enforceable:
12 *Provided*, That the decision as to whether the arbitration
13 agreement is enforceable shall be made by a court of competent
14 jurisdiction, if requested by any party to the arbitration or
15 agreement, pursuant to section nine of this article.

16 (d) If a party to a judicial proceeding challenges the
17 existence of, or claims that a controversy is not subject to, an
18 agreement to arbitrate, the arbitration proceeding may
19 continue pending final resolution of the issue by the court,
20 unless the court otherwise orders.

§55-10-9. Motion to compel or stay arbitration.

1 (a) On motion of a person showing an agreement to
2 arbitrate and alleging another person's refusal to arbitrate
3 pursuant to the agreement:

4 (1) If the refusing party does not appear or does not
5 oppose the motion, the court shall order the parties to
6 arbitrate; and

7 (2) If the refusing party opposes the motion, the court
8 shall proceed summarily to decide the issue and order the
9 parties to arbitrate unless it finds that there is no enforceable
10 agreement to arbitrate.

11 (b) On motion of a person alleging that an arbitration
12 proceeding has been initiated or threatened but that there is
13 no agreement to arbitrate, the court shall proceed summarily
14 to decide the issue. If the court finds that there is an
15 enforceable agreement to arbitrate, it shall order the parties to
16 arbitrate.

17 (c) If the court finds that there is no enforceable
18 agreement, it may not, pursuant to subsection (a) or (b) of this
19 section, order the parties to arbitrate.

20 (d) The court may not refuse to order arbitration because
21 the claim subject to arbitration lacks merit or grounds for the
22 claim have not been established.

23 (e) If a proceeding involving a claim referable to
24 arbitration under an alleged agreement to arbitrate is
25 pending in court, a motion under this section must be made
26 in that court. Otherwise a motion under this section may be
27 made in any court as provided in section twenty-nine of this
28 article.

29 (f) If a party makes a motion to the court to order
30 arbitration, the court on just terms shall stay any judicial
31 proceeding that involves a claim alleged to be subject to the
32 arbitration until the court renders a final decision under this
33 section.

34 (g) If the court orders arbitration, the court on just terms
35 shall stay any judicial proceeding that involves a claim
36 subject to the arbitration. If a claim subject to the arbitration
37 is severable, the court may limit the stay to that claim.

§55-10-10. Provisional remedies.

1 (a) Before an arbitrator is appointed and is authorized and
2 able to act, the court, upon motion of a party to an arbitration
3 proceeding and for good cause shown, may enter an order for
4 provisional remedies to protect the effectiveness of the
5 arbitration proceeding to the same extent and under the same
6 conditions as if the controversy were the subject of a civil
7 action.

8 (b) After an arbitrator is appointed and is authorized and
9 able to act:

10 (1) The arbitrator may issue such orders for provisional
11 remedies, including interim awards, as the arbitrator finds
12 necessary to protect the effectiveness of the arbitration
13 proceeding and to promote the fair and expeditious resolution
14 of the controversy to the same extent and under the same

15 conditions as if the controversy were the subject of a civil
16 action; and

17 (2) A party to an arbitration proceeding may move the
18 court for a provisional remedy only if the matter is urgent and
19 the arbitrator is not able to act timely or the arbitrator cannot
20 provide an adequate remedy.

21 (c) A party does not waive a right of arbitration by
22 making a motion under subsection (a) or (b) of this section.

§55-10-11. Initiation of arbitration.

1 (a) A person initiates an arbitration proceeding by
2 giving notice in a record to the other parties to the
3 agreement to arbitrate in the agreed manner between the
4 parties or, in the absence of agreement, by certified or
5 registered mail, return receipt requested and obtained, or by
6 service as authorized for the commencement of a civil
7 action. The notice must describe the nature of the
8 controversy and the remedy sought.

9 (b) Unless a person objects for lack or insufficiency of
10 notice under section seventeen of this article not later than the
11 beginning of the arbitration hearing, the person by appearing
12 at the hearing waives any objection to lack of or insufficiency
13 of notice.

§55-10-12. Consolidation of separate arbitration proceedings.

1 (a) Except as otherwise provided in subsection (c) of this
2 section, upon motion of a party to an agreement to arbitrate
3 or to an arbitration proceeding, the court may order
4 consolidation of separate arbitration proceedings as to all or
5 some of the claims if:

6 (1) There are separate agreements to arbitrate or separate
7 arbitration proceedings between the same persons or one of
8 them is a party to a separate agreement to arbitrate or a
9 separate arbitration proceeding with a third person;

10 (2) The claims subject to the agreements to arbitrate arise
11 in substantial part from the same transaction or series of
12 related transactions;

13 (3) The existence of a common issue of law or fact
14 creates the possibility of conflicting decisions in the separate
15 arbitration proceedings; and

16 (4) Prejudice resulting from a failure to consolidate is not
17 outweighed by the risk of undue delay or prejudice to the
18 rights of or hardship to parties opposing consolidation.

19 (b) The court may order consolidation of separate
20 arbitration proceedings as to some claims and allow other
21 claims to be resolved in separate arbitration proceedings.

22 (c) The court may not order consolidation of the claims
23 of a party to an agreement to arbitrate if the agreement
24 prohibits consolidation.

§55-10-13. Appointment of arbitrator; service as a neutral arbitrator.

1 (a) If the parties to an agreement to arbitrate agree on a
2 method for appointing an arbitrator, that method must be
3 followed, unless the method fails. If the parties have not
4 agreed on a method, the agreed method fails or an arbitrator
5 appointed fails or is unable to act and a successor has not
6 been appointed, the court, on motion of a party to the
7 arbitration proceeding, shall appoint the arbitrator. An
8 arbitrator so appointed has all the powers of an arbitrator
9 designated in the agreement to arbitrate or appointed pursuant
10 to the agreed method.

11 (b) An individual who has a known, direct and material
12 interest in the outcome of the arbitration proceeding or a
13 known, existing and substantial relationship with a party may
14 not serve as an arbitrator required by an agreement to be
15 neutral.

§55-10-14. Disclosure by arbitrator.

1 (a) Before accepting appointment, an individual who is
2 requested to serve as an arbitrator, after making a reasonable
3 inquiry, shall disclose to all parties to the agreement to
4 arbitrate and arbitration proceeding and to any other
5 arbitrators any known facts that a reasonable person would
6 consider likely to affect the impartiality of the arbitrator in
7 the arbitration proceeding, including:

8 (1) A financial or personal interest in the outcome of the
9 arbitration proceeding; and

10 (2) An existing or past relationship with any of the parties
11 to the agreement to arbitrate or the arbitration proceeding, their
12 counsel or representatives, a witness or another arbitrator.

13 (b) An arbitrator has a continuing obligation to disclose
14 to all parties to the agreement to arbitrate and arbitration
15 proceeding and to any other arbitrators any facts that the
16 arbitrator learns after accepting appointment which a
17 reasonable person would consider likely to affect the
18 impartiality of the arbitrator.

19 (c) If an arbitrator discloses a fact required by subsection
20 (a) or (b) of this section to be disclosed and a party timely
21 objects to the appointment or continued service of the
22 arbitrator based upon the fact disclosed, the objection may be
23 a ground under section twenty-five of this article for vacating
24 an award made by the arbitrator.

25 (d) If the arbitrator did not disclose a fact as required by
26 subsection (a) or (b) of this section, upon timely objection by
27 a party, the court, under section twenty-five of this article,
28 may vacate an award.

29 (e) An arbitrator appointed as a neutral arbitrator who
30 does not disclose a known, direct and material interest in the
31 outcome of the arbitration proceeding or a known, existing
32 and substantial relationship with a party is presumed to act
33 with evident partiality under section twenty-five of this
34 article.

35 (f) If the parties to an arbitration proceeding agree to the
36 procedures of an arbitration organization or any other
37 procedures for challenges to arbitrators before an award is
38 made, substantial compliance with those procedures is a
39 condition precedent to a motion to vacate an award on that
40 ground under section twenty-five of this article.

§55-10-15. Action by majority.

1 If there is more than one arbitrator, the powers of an
2 arbitrator must be exercised by a majority of the arbitrators,
3 but all of them shall conduct the hearing under section
4 seventeen of this article.

**§55-10-16. Immunity of arbitrator; competency to testify; attorney's fees
and costs.**

1 (a) An arbitrator or an arbitration organization acting in
2 that capacity is immune from civil liability to the same extent
3 as a judge of a court of this state acting in a judicial capacity.

4 (b) The immunity afforded by this section supplements
5 any immunity under other law.

6 (c) The failure of an arbitrator to make a disclosure
7 required by section fourteen of this article does not cause any
8 loss of immunity under this section.

9 (d) In a judicial, administrative or similar proceeding, an
10 arbitrator or representative of an arbitration organization is
11 not competent to testify, and may not be required to produce
12 records as to any statement, conduct, decision or ruling
13 occurring during the arbitration proceeding, to the same
14 extent as a judge of a court of this state acting in a judicial
15 capacity. This subsection does not apply:

16 (1) To the extent necessary to determine the claim of an
17 arbitrator, arbitration organization or representative of the
18 arbitration organization against a party to the arbitration
19 proceeding; or

20 (2) To a hearing on a motion to vacate an award under
21 section twenty-five of this article if the moving party
22 establishes prima facie that a ground for vacating the award
23 exists.

24 (e) If a person commences a civil action against an
25 arbitrator, arbitration organization or representative of an
26 arbitration organization arising from the services of the
27 arbitrator, organization or representative or if a person seeks
28 to compel an arbitrator or a representative of an arbitration
29 organization to testify or produce records in violation of
30 subsection (d) of this section, and the court decides that the
31 arbitrator, arbitration organization or representative of an
32 arbitration organization is immune from civil liability or that
33 the arbitrator or representative of the organization is not
34 competent to testify, the court shall award to the arbitrator,
35 organization or representative reasonable attorneys' fees and
36 other reasonable expenses of litigation.

§55-10-17. Arbitration process.

1 (a) An arbitrator may conduct an arbitration in such
2 manner as the arbitrator considers appropriate for a fair and
3 expeditious disposition of the proceeding. The authority
4 conferred upon the arbitrator includes the power to hold
5 conferences with the parties to the arbitration proceeding
6 before the hearing and, among other matters, determine the
7 admissibility, relevance, materiality and weight of any
8 evidence.

9 (b) An arbitrator may decide a request for summary
10 disposition of a claim or particular issue:

11 (1) If all interested parties agree; or

12 (2) Upon request of one party to the arbitration
13 proceeding if that party gives notice to all other parties to the
14 proceeding, and the other parties have a reasonable
15 opportunity to respond.

16 (c) If an arbitrator orders a hearing, the arbitrator shall set
17 a time and place and give notice of the hearing not less than
18 five days before the hearing begins. Unless a party to the
19 arbitration proceeding makes an objection to lack or
20 insufficiency of notice not later than the beginning of the
21 hearing, the party's appearance at the hearing waives the
22 objection. Upon request of a party to the arbitration
23 proceeding and for good cause shown, or upon the
24 arbitrator's own initiative, the arbitrator may adjourn the
25 hearing, from time to time, as necessary but may not
26 postpone the hearing to a time later than that fixed by the
27 agreement to arbitrate for making the award unless the parties
28 to the arbitration proceeding consent to a later date. The
29 arbitrator may hear and decide the controversy upon the
30 evidence produced although a party who was duly notified of

31 the arbitration proceeding did not appear. The court, on
32 request, may direct the arbitrator to conduct the hearing
33 promptly and render a timely decision.

34 (d) At a hearing under subsection (c) of this section, a
35 party to the arbitration proceeding has a right to be heard, to
36 present evidence material to the controversy and to cross
37 examine witnesses appearing at the hearing.

38 (e) If an arbitrator ceases or is unable to act during the
39 arbitration proceeding, a replacement arbitrator must be
40 appointed in accordance with section thirteen of this article
41 to continue the proceeding and to resolve the controversy.

§55-10-18. Representation by lawyer.

1 A party to an arbitration proceeding may be represented
2 by a lawyer licensed to practice law in the State of West
3 Virginia.

§55-10-19. Witnesses; subpoenas; depositions; discovery.

1 (a) An arbitrator may issue a subpoena for the attendance
2 of a witness and for the production of records and other
3 evidence at any hearing and may administer oaths. A
4 subpoena must be served in the manner for service of
5 subpoenas in a civil action and, upon motion to the court by
6 a party to the arbitration proceeding or the arbitrator,
7 enforced in the manner for enforcement of subpoenas in a
8 civil action.

9 (b) In order to make the proceedings fair, expeditious and
10 cost effective, upon request of a party to or a witness in an
11 arbitration proceeding, an arbitrator may permit a deposition
12 of any witness to be taken for use as evidence at the hearing,
13 including a witness who cannot be subpoenaed for or is

14 unable to attend a hearing. The arbitrator shall determine the
15 conditions under which the deposition is taken.

16 (c) An arbitrator may permit such discovery as the
17 arbitrator decides is appropriate in the circumstances, taking
18 into account the needs of the parties to the arbitration
19 proceeding and other affected persons and the desirability of
20 making the proceeding fair, expeditious and cost effective.

21 (d) If an arbitrator permits discovery under subsection (c)
22 of this section, the arbitrator may order a party to the
23 arbitration proceeding to comply with the arbitrator's
24 discovery-related orders, issue subpoenas for the attendance
25 of a witness and for the production of records and other
26 evidence at a discovery proceeding and take action against a
27 noncomplying party to the extent a court could if the
28 controversy were the subject of a civil action in this state.

29 (e) An arbitrator may issue a protective order to prevent
30 the disclosure of privileged information, confidential
31 information, trade secrets and other information protected
32 from disclosure to the extent a court could if the controversy
33 were the subject of a civil action in this state.

34 (f) All laws compelling a person under subpoena to
35 testify and all fees for attending a judicial proceeding, a
36 deposition or a discovery proceeding as a witness apply to an
37 arbitration proceeding as if the controversy were the subject
38 of a civil action in this state.

39 (g) The court may enforce a subpoena or
40 discovery-related order for the attendance of a witness within
41 this state and for the production of records and other evidence
42 issued by an arbitrator in connection with an arbitration
43 proceeding in another state upon conditions determined by
44 the court so as to make the arbitration proceeding fair,

45 expeditious and cost effective. A subpoena or
46 discovery-related order issued by an arbitrator in another
47 state must be served in the manner provided by law for
48 service of subpoenas in a civil action in this state and, upon
49 motion to the court by a party to the arbitration proceeding or
50 the arbitrator, enforced in the manner provided by law for
51 enforcement of subpoenas in a civil action in this state.

§55-10-20. Judicial enforcement of preaward ruling by arbitrator.

1 If an arbitrator makes a preaward ruling in favor of a
2 party to the arbitration proceeding, the party may request the
3 arbitrator to incorporate the ruling into an award under
4 section twenty-one of this article. A prevailing party may
5 make a motion to the court for an expedited order to confirm
6 the award under section twenty-four of this article, in which
7 case the court shall summarily decide the motion. The court
8 shall issue an order to confirm the award unless the court
9 vacates, modifies or corrects the award under section
10 twenty-five or twenty-six of this article.

§55-10-21. Award.

1 (a) An arbitrator shall make a record of an award. Such
2 record should set forth findings of fact and conclusions of
3 law that support the award. The record must be signed or
4 otherwise authenticated by any arbitrator who concurs with
5 the award. The arbitrator or the arbitration organization shall
6 give notice of the award, including a copy of the award, to
7 each party to the arbitration proceeding.

8 (b) An award must be made within the time specified by
9 the agreement to arbitrate or, if not specified therein, within
10 the time ordered by the court. The court may extend, or the
11 parties to the arbitration proceeding may agree in a record to
12 extend, the time. The court or the parties may do so within

13 or after the time specified or ordered. A party waives any
14 objection that an award was not timely made unless the party
15 gives notice of the objection to the arbitrator before receiving
16 notice of the award.

17 (c) This section does not apply to an arbitration
18 conducted or administered by a self-regulatory organization
19 as defined by the Securities Exchange Act of 1934 (15 U.
20 S.C. §78C), the Commodity Exchange Act (7 U. S. C. §1, *et*
21 *seq.*) or regulations adopted under those acts.

§55-10-22. Change of award by arbitrator.

1 (a) On motion to an arbitrator by a party to an arbitration
2 proceeding, the arbitrator may modify or correct an award:

3 (1) Upon a ground stated in section twenty-six of this
4 article;

5 (2) Because the arbitrator has not made a final and
6 definite award upon a claim submitted by the parties to the
7 arbitration proceeding; or

8 (3) To clarify the award.

9 (b) A motion under subsection (a) of this section must be
10 made and notice given to all parties within twenty days after
11 the moving party receives notice of the award.

12 (c) A party to the arbitration proceeding must give notice
13 of any objection to the motion within ten days after receipt of
14 the notice.

15 (d) If a motion to the court is pending under section
16 twenty-four, twenty-five or twenty-six of this article, the
17 court may submit the claim to the arbitrator to consider
18 whether to modify or correct the award:

19 (1) Upon a ground stated in section twenty-four of this
20 article;

21 (2) Because the arbitrator has not made a final and
22 definite award upon a claim submitted by the parties to the
23 arbitration proceeding; or

24 (3) To clarify the award.

25 (e) An award modified or corrected pursuant to this
26 section is subject to sections twenty-one, twenty-four,
27 twenty-five and twenty-six of this article.

§55-10-23. Remedies; fees and expenses of arbitration proceeding.

1 (a) An arbitrator may award punitive damages or other
2 exemplary relief if such an award is authorized by law in a
3 civil action involving the same claim and the evidence
4 produced at the hearing justifies the award under the legal
5 standards otherwise applicable to the claim.

6 (b) An arbitrator may award reasonable attorney's fees
7 and other reasonable expenses of arbitration if such an award
8 is authorized by law in a civil action involving the same
9 claim or by the agreement of the parties to the arbitration
10 proceeding.

11 (c) As to all remedies other than those authorized by
12 subsections (a) and (b) of this section, an arbitrator may order
13 such remedies as the arbitrator considers just and appropriate
14 under the circumstances of the arbitration proceeding. The
15 fact that such a remedy could not or would not be granted by
16 the court is not a ground for refusing to confirm an award
17 under section twenty-four of this article or for vacating an
18 award under section twenty-three of this article.

19 (d) An arbitrator's award shall provide for the payment of
20 expenses and fees, together with other expenses to be split
21 among the parties, as provided by the parties' agreement or
22 the rules of the arbitration organization.

23 (e) If an arbitrator awards punitive damages or other
24 exemplary relief under subsection (a) of this section, the
25 arbitrator shall specify in the award the basis in fact justifying
26 and the basis in law authorizing the award and state
27 separately the amount of the punitive damages or other
28 exemplary relief.

§55-10-24. Confirmation of award.

1 After a party to an arbitration proceeding receives notice
2 of an award, the party may make a motion to the court for an
3 order confirming the award at which time the court shall issue
4 a confirming order unless the award is modified or corrected
5 pursuant to section twenty-two or twenty-six of this article or
6 is vacated pursuant to section twenty-five of this article.

§55-10-25. Vacating award.

1 (a) Upon motion to the court by a party to an arbitration
2 proceeding, the court shall vacate an award made in the
3 arbitration proceeding if:

4 (1) The award was procured by corruption, fraud or other
5 undue means;

6 (2) There was:

7 (A) Evident partiality by an arbitrator appointed as a
8 neutral arbitrator;

9 (B) Corruption by an arbitrator; or

10 (C) Misconduct by an arbitrator prejudicing the rights of
11 a party to the arbitration proceeding;

12 (3) An arbitrator refused to postpone the hearing upon
13 showing of sufficient cause for postponement, refused to
14 consider evidence material to the controversy or otherwise
15 conducted the hearing contrary to section seventeen of this
16 article, so as to prejudice substantially the rights of a party to
17 the arbitration proceeding;

18 (4) An arbitrator exceeded the arbitrator's powers;

19 (5) There was no agreement to arbitrate, unless the person
20 participated in the arbitration proceeding without raising the
21 objection under section seventeen of this article not later than
22 the beginning of the arbitration hearing; or

23 (6) The arbitration was conducted without proper notice
24 of the initiation of an arbitration as required in section nine so
25 as to prejudice substantially the rights of a party to the
26 arbitration proceeding.

27 (b) A motion under this section must be filed within
28 ninety days after the moving party receives notice of the
29 award pursuant to section twenty-one of this article or within
30 ninety days after the moving party receives notice of a
31 modified or corrected award pursuant to section twenty-two
32 of this article, unless the moving party alleges that the award
33 was procured by corruption, fraud or other undue means, in
34 which case the motion must be made within ninety days after
35 the ground is known or by the exercise of reasonable care
36 would have been known by the moving party.

37 (c) If the court vacates an award on a ground other than
38 that set forth in subdivision (5), subsection (a) of this section,
39 it may order a rehearing. If the award is vacated on a ground

40 stated in subdivision (1) or (2), subsection (a) of this section,
41 the rehearing must be before a new arbitrator. If the award is
42 vacated on a ground stated in subdivision (3), (4) or (6),
43 subsection (a) of this section, the rehearing may be before the
44 arbitrator who made the award or the arbitrator's successor.
45 The arbitrator must render the decision in the rehearing
46 within the same time as that provided in section twenty-one
47 of this article for an award.

48 (d) If the court denies a motion to vacate an award, it
49 shall confirm the award unless a motion to modify or correct
50 the award is pending.

§55-10-26. Modification or correction of award.

1 (a) Upon motion made within ninety days after the
2 moving party receives notice of the award pursuant to section
3 nineteen of this article or within ninety days after the moving
4 party receives notice of a modified or corrected award
5 pursuant to section twenty-two of this article, the court shall
6 modify or correct the award if:

7 (1) There was an evident mathematical miscalculation or
8 an evident mistake in the description of a person, thing or
9 property referred to in the award;

10 (2) The arbitrator has made an award on a claim not
11 submitted to the arbitrator and the award may be corrected
12 without affecting the merits of the decision upon the claims
13 submitted; or

14 (3) The award is imperfect in a matter of form not
15 affecting the merits of the decision on the claims submitted.

16 (b) If a motion made under subsection (a) of this section
17 is granted, the court shall modify or correct and confirm the

18 award as modified or corrected. Otherwise, unless a motion
19 to vacate is pending, the court shall confirm the award.

20 (c) A motion to modify or correct an award pursuant to
21 this section may be joined with a motion to vacate the award.

§55-10-27. Judgment on award; attorneys' fees and litigation expenses.

1 (a) Upon granting an order confirming, vacating without
2 directing a rehearing, modifying or correcting an award, the
3 court shall enter a judgment in conformity therewith. The
4 judgment may be recorded, docketed and enforced as any
5 other judgment in a civil action.

6 (b) A court may allow reasonable costs of the motion and
7 subsequent judicial proceedings.

8 (c) On application of a prevailing party to a contested
9 judicial proceeding under section twenty-four, twenty-five or
10 twenty-six of this article, the court may add reasonable
11 attorneys' fees and other reasonable expenses of litigation
12 incurred in a judicial proceeding after the award is made to a
13 judgment confirming, vacating without directing a rehearing,
14 modifying or correcting an award.

§55-10-28. Jurisdiction.

1 (a) A court of this state having jurisdiction over the
2 controversy and the parties may enforce an agreement to
3 arbitrate.

4 (b) An agreement to arbitrate providing for arbitration in
5 this state confers exclusive jurisdiction on the court to enter
6 judgment on an award under this article.

§55-10-29. Venue.

1 A motion pursuant to section seven of this article must be
2 made in the circuit court of the county in which the
3 agreement to arbitrate specifies the arbitration hearing is to be
4 held or, if the hearing has been held, in the circuit court of the
5 county in which it was held. Otherwise, the motion may be
6 made in the court of any county in which an adverse party
7 resides or has a place of business or, if no adverse party has
8 a residence or place of business in this state, in the circuit
9 court of Kanawha County, West Virginia. All subsequent
10 motions must be made in the court hearing the initial motion
11 unless the court otherwise directs.

§55-10-30. Appeals.

1 (a) An appeal may be taken from:

2 (1) An order denying a motion to compel arbitration;

3 (2) An order granting or denying a motion to compel
4 arbitration issued in an action filed pursuant to the provisions
5 of chapter forty-six-a of this code;

6 (3) An order granting a motion to stay arbitration;

7 (4) An order confirming or denying confirmation of an
8 award;

9 (5) An order modifying or correcting an award;

10 (6) An order vacating an award without directing a
11 rehearing; or

12 (7) A final judgment entered pursuant to this article.

13 (b) An appeal under this section must be taken as from an
14 order or a judgment in a civil action.

§55-10-31. Uniformity of application and construction.

1 In applying and construing this uniform act, consideration
2 must be given to the need to promote uniformity of the law
3 with respect to its subject matter among states that enact it.

§55-10-32. Electronic Signatures in Global and National Commerce Act.

1 The provisions of this article governing the legal effect,
2 validity or enforceability of electronic records or signatures,
3 and of contracts performed with the use of such records or
4 signatures, shall conform to the requirements of Section 102
5 of the Electronic Signatures in Global and National
6 Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000).

§55-10-33. Savings clause.

1 This article does not affect an action or proceeding
2 commenced or right accrued before this article takes effect.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect July 1, 2015.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker of the House of Delegates

The within *is* appended..... this the *31st*.....
Day of *March*....., 2015.

[Signature]
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 27 2015

Time 3:15 